

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Timothy Lavar VanDerHorst,)	C/A No. 0:10-1537-SB-PJG
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
Paul Egger,)	
)	
Defendant.)	
)	

Plaintiff Timothy Lavar VanDerHorst (“VanDerHorst”), proceeding *pro se*, filed this action pursuant to 42 U.S.C. § 1983 alleging a violation of his constitutional rights. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC on the defendant’s motion to dismiss. (ECF No. 29.)

On September 23, 2010 the defendant filed a motion to dismiss on the grounds that VanDerHorst had not updated the Clerk of Court as to his current address. (ECF No. 29.) By order of this court filed September 24, 2010, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), VanDerHorst was advised of the dismissal and summary judgment procedures and the possible consequences if he failed to respond adequately. (ECF No. 30.) This order, which was mailed to VanDerHorst, was returned to the Clerk of Court on October 1, 2010, as undeliverable by the United States Postal Service. The court issued a second order on November 1, 2010, advising VanDerHorst that it appeared to the court that he was not opposing the motion and wished to abandon this action, and giving him an additional seven (7) days in which to file his response to the defendant’s motion to dismiss. (ECF No. 35.) VanDerHorst filed a response on November 8, 2010 which contained a new return address. (ECF No. 38.)

RECOMMENDATION

The plaintiff has updated his address with the court and taken steps to move his case forward. Accordingly, the court recommends that the defendant's motion to dismiss (ECF No. 29) be denied. The plaintiff is reminded of his obligation to comply with the directives of the court in a timely fashion. Failure to do so may result in dismissal of the plaintiff's case.



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

February 10, 2011
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).